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ABSTRACT

One Supreme Court decision, seven federal appellate decisions, and two district court decisions were published in the area of school finance in 1990. The Supreme Court reviewed a case concerning allegations of school district segregation, along with an ensuing tax assessment issue. Federal appellate courts handed down decisions involving alleged violations of federal antitrust acts, the supplanting of state and local funds with federal funds, liability insurance payments, payments of costs covered by federal legislation, school district ownership of forfeited property, and alleged violations of the Voting Rights Act. State courts litigated cases involving school fees, payment of tuition, the use of tax revenues for settlement of liability cases, construction contract disputes, and bidding violations. Cases discussed in this chapter fall under three major topics: (1) public funds for private schools; (2) sources and allocations of public school funds; and (3) school tax issues. (MLF)

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FINANCE

Bettye MacPhail-Wilcox
and Pat Anthony

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INTRODUCTION

One Supreme Court decision, seven federal appellate decisions, and two district court decisions were published in the area of school finance in 1990. The Supreme Court reviewed a case concerning allegations of school district segregation, along with an ensuing tax assessment issue. The appellate courts handed down decisions involving alleged violations of federal antitrust acts, the supplanting of state and local funds with federal funds, liability insurance payments, payments of costs covered by federal legislation, school district ownership of forfeited property, and alleged violations of the Voting Rights Act. The two district court opinions concerned first amendment establishment clause issues.

One state supreme court ruled on the constitutionality of the state's public school financing scheme, and another state supreme court modified its earlier ruling on the same issue. Several state courts examined the viability of states' revocation of local school aid. Taxpayer challenges

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to state school district reorganization and use of categorical aid were also heard by the courts. One state court reviewed a case involving the placement of a referendum question on the ballot; the referendum opposed new state school finance legislation.

State courts also litigated cases involving school fees, including those incurred by parents and those levied on developers. Payment of tuition was a source of litigation for parents, a driver and traffic safety instructor, and a student desiring vocational education. There were several cases relating to tax assessment issues, as well as refusal to disburse school tax allocations in their entirety. Cases concerning the use of tax revenues for settlement of liability cases, construction contract disputes, and bidding violations were litigated. Four agencies sued for tax exemptions, while nine state courts reviewed bond issuance challenges. Finally, in the state of Texas, two delinquent tax cases were litigated.

PUBLIC FUNDS for PRIVATE SCHOOLS

Taxpayers sued various school district, state, and federal education officials over implementation of the Education Consolidation and Improvement Act, declaring that monies used to fund remedial programs for students attending sectarian schools violated both the first amendment and the California Constitution.[1] The district court ruled that the targeted school, a public school program for pregnant unwed mothers housed on the premises of a Roman Catholic religious order, was nonsectarian since the program in no way fit a profile previously employed in *Committee for Public Education & Religious Liberty v. Nyquist*[2] to describe a pervasively sectarian institution. The program was not restrictive in its admissions policy. Furthermore, it did not require attendance at religious activities, adherence by students to a particular faith, or inculcation of religious beliefs. It provided no religious instruction, did not restrict faculty appointments to one particular faith, and did not direct faculty on what or how they were to teach.[3] Since the school was nonsectarian, public funding for the program did not violate the establishment clause.

Nor did funding for the program violate article IX, section 8 of the California Constitution, which stipulates, "[n]o public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools."[4] Having decided that the unwed mothers' program was a nonsectarian program, the court then determined that although funding for the

1. Walker v. San Francisco Unified School Dist., 741 F. Supp. 1386 (N.D. Cal. 1990).
2. 413 U.S. 756 (1973).
3. 741 F. Supp. 1386, 1392.
4. *Id.* at 1395.

program was not totally comprised of public funds, the school was controlled by the district and as such did not violate the state constitution.

A third issue the court undertook was determining the constitutionality of federal legislation involving Chapter 2. In holding that it was constitutional, the court pointed out that the primary effect of the legislation was "to provide instructional materials and more effective school programs and to meet the needs of at-risk and high-cost students."[5]

Three final issues had to be resolved. The first concerned the standing of the taxpayers in raising the constitutional challenge. The court agreed with the plaintiffs that, as taxpayers, they did have standing, and then proceeded to the second issue, involving the implementation of Chapter 2 in the district. Again, the court found that Chapter 2 was constitutional in that it provided funding for all students.

Finally, the court disagreed with plaintiffs' assertion that Chapter 2 violated the equal protection clause, observing that the fourteenth amendment applies only to state, not federal, laws and that they lacked standing to challenge Chapter 2 on fifth amendment grounds.[6]

The United States District Court of Massachusetts ordered a consent decree to be entered in a case involving the leasing of a parish center for the use of public school classrooms.[7] In the original case,[8] parents of an elementary school child, citing establishment clause violations, filed suit, seeking reassignment of their son and an injunction to prevent the school district from leasing the parish center. Recognizing the substantiality of the parents' claims, the court ordered the child reassigned for the coming year and developed a timetable for dealing with the constitutional issues of the case. Shortly before the court was to convene a second time, the school district renegotiated its lease with the church. First, citing fiscal reasons, the district agreed not to lease the building for three years. Second, the new lease stipulated that either party could cancel the lease for any reason, having given thirty days' notice. Third, the routes taken by school children in entering and exiting the building were changed so that they would not be exposed to religious articles.

In view of these changes, a consent decree was entered into stipulating that the district was barred from using the parish center for the next three years, and if it later wished to do so it must seek redress in the court at least three months prior to commencement of the lease. The district also was directed to pay part of plaintiffs' attorneys' fees; and both parties were directed to develop a "mutually agreeable program" for students of the district on the meaning of the first amendment's religion clauses.[9]

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5. *Id.* at 1399.
6. *Id.* at 1406.
7. Spacco v. Bridgewater School Dep't, 739 F. Supp. 30 (D. Mass. 1990).
8. Spacco v. Bridgewater School Dep't, 722 F. Supp. 834 (D. Mass. 1989).
9. *Id.*

SOURCES and ALLOCATIONS of PUBLIC SCHOOL FUNDS

State School Finance Programs

One state supreme court, New Jersey, issued an opinion concerning the constitutionality of the state's public education financing scheme. A second state, Montana, modified a section of a previous opinion pertaining to the constitutionality of the state education financing system. Two state supreme courts rendered decisions in cases challenging state reductions in local school aid. The New York Court of Appeals considered an issue related to the dispersal of state categorical funds, while the New York Supreme Court, Appellate Division, heard a taxpayers' case challenging a state plan for school district reorganization. Finally, in New Jersey, the state supreme court resolved an issue concerning the right of taxpayers to seek a referendum on the new state school aid act.

In New Jersey, the state supreme court reversed an earlier decision of the Commissioner of Education that the state system for financing schools was unconstitutional, finding instead that "the Act is unconstitutional as applied to poorer urban school districts."[10] The court found the Public School Education Act of 1975[11] to be in violation of the state constitution's "thorough and efficient" clause,[12] because students in certain poorer urban districts were not receiving a thorough and efficient education. In addition, the court determined that newly adopted changes in the law would still not result in achieving a thorough and efficient education for those students.

The court ruled the minimum aid provision of the Act unconstitutional as well, because it was "counter-equalizing," distributing aid to districts which have tax bases in excess of the Act's guaranteed tax base. Since these were the richer districts, the provision increased funding disparities between rich and poor districts, rather than diminishing them. The court concluded that while New Jersey was generous in its spending on education, the manner in which funding was distributed under the current funding law was unconstitutional, because the quality of a child's education was dependent upon the wealth of the district in which the student resided, which was in direct violation of the constitutional clause mandating that all children receive a thorough and efficient education.

In Montana, the state supreme court modified an earlier decision in which the system for financing public education within the state was found to be unconstitutional.[13] The court had retained jurisdiction until July 1, 1989, when the holdings of the court were to become fully effective. Due

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10. Abbott by Abbott v. Burke, 575 A.2d 359 (N.J. 1990).
11. N.J.S.A. 18A:7A-1 to 18A:7A-52, (1975).
12. N.J. Const. of 1947, art. VIII, sec. 4, para. 1.
13. Helena Elementary School Dist. 1 v. State, 784 P.2d 412 (Mont. 1990).

to the magnitude of the task and the need to pass extensive legislation, a special legislative session was held, bypassing the effective date for implementation of the court's decision. State and school districts petitioned the court to delay the date for implementing the decision, and the court agreed, setting the new date for July 1, 1991. Furthermore, the court declined to retain jurisdiction, observing that the changes in the law would require "new and different proof" from challengers, and such proof would need to be presented in entirely new litigation.

The Supreme Court of North Dakota ruled that a state statute allowing the state budget director to reduce local school aid appropriations was not unconstitutional.[14] School districts and the council of school administrators had challenged the authority of the state budget director in reducing the amounts of school aid to local districts during a perceived state fiscal crisis. When the crisis was averted and school aid appropriations were not restored to their original amounts, districts and the administrators sued, maintaining that the budget director was given an illegal delegation of legislative authority .

The court affirmed a lower court decision, upholding the constitutionality of the statute, stating that "delegation of various governmental functions has long been recognized as a virtual necessity."[15] The court also addressed a second issue concerning the statute: once funds were reduced, is the budget director required to restore funds to their original amounts if the funds are available? In interpreting the law, the court found no clear duty on the part of the budget director to restore funds to prior appropriation levels.

In another case concerning the reduction of school aid, the Supreme Judicial Court of Massachusetts ruled that the Governor did not have the authority to reduce state school funds in the face of a state budget shortfall.[16] While acknowledging that the Governor had the power to reduce some state appropriations,[17] the court argued that these particular appropriations were not funds under the control of the Governor or secretary,[18] as stipulated by the statute and, therefore, could not be reduced.

The New York Court of Appeals reversed lower court decisions on the disbursement of categorical funds to administrators who also taught.[19] School administrators challenged a regulation associated with the state's "Excellence in Teaching" program, which precluded teaching administrators from participating in the program. Citing legislative intent, the court maintained that the regulations rationally related to the intent of

14. North Dakota Council of School Adm'rs v. Sinner, 458 N.W.2d 280 (N.D. 1990)
15. *Id.* at 286.
16. Brookline v. Governor, 553 N.E.2d 1277 (Mass. 1990).
17. Mass. G.L. c. 29, § 9C.
18. *Id.* at 1279.
19. Schneider v. Sobol, 559 N.Y.S.2d 221 (N.Y. 1990).

the program because the purpose of the law was to provide funds to improve salaries for teachers[20] and not to augment salaries of administrators, except for those administrators on a teacher salary schedule.

In another New York case at the Supreme Court, Appellate Division level, taxpayers brought an article 78 proceeding against the Commissioner of Education in order to compel him to revise the state plan for school district reorganization, and to determine which districts were eligible for "high tax aid."[21] The court upheld an earlier decision, ruling first that petitioners must exhaust all available administrative remedies prior to seeking judicial review. The court then determined that neither district seeking high tax aid was eligible according to the state education law, which clearly stated that in order to be eligible, a district must have maintained a K-8 home school and must be continually willing to join efforts toward reorganization.[22] Since neither of the districts fit both of these descriptions, the court ruled that they could not be classified as "high tax aid" districts.

Citizens' groups in New Jersey brought suit to enjoin county boards from putting on the ballot questions concerning the new school aid law.[23] The state supreme court ruled that county boards had no jurisdiction, and enjoined boards from putting the questions on the ballot.

Local Funds for Education

In a case concerning a particular source of local funding for schools in Virginia, the United States Court of Appeals handed down a ruling on alleged violations of the Robinson-Patman Act.[24] Several local photography companies brought suit against two national chains, Olan Mills, Inc. and Kinder-Care, Inc., charging that these two companies engaged in "commercial bribery" when agreeing to pay local high schools a percentage of the profits earned from being the schools' "official photographer" for yearbook portraits. Appellants also charged that the companies developed a "tying arrangement," and conspired with high school officials and each other to restrict access to the trade, thus violating the Sherman Act.[25]

The court, in examining these issues, affirmed a lower court decision for summary judgment in favor of the appellees. First, the court found no evidence of a "tying arrangement," because parents and students were under no obligation to buy yearbooks, the photographs for the yearbooks were free, and there existed no relationship between buying a yearbook

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20. N.Y. Educ. Law, § 1950[15][a]; § 3602[27][a] (McKinney 1950).
21. Carlo v. Sobol, 557 N.Y.S.2d 592 (App. Div. 1990).
22. *Id.*
23. New Jersey State AFL-CIO v. Board of Chosen Freeholders, 579 A.2d 1231 (N.J. 1990).
24. Stephen Jay Photography, Ltd. v. Olan Mills, Inc., 903 F.2d 988 (4th Cir. 1990).
25. *Id.*

and having a yearbook photograph taken. Second, the court found no violation of the Robinson-Patman Act, since the schools were not acting as purchasing agents for the students. Although encouraged to buy portraits from Olan Mills or Kinder-Care, students were under no obligation to do so. In response to two final charges, monopolizing the trade and price-fixing, the court decided that neither claim had been substantiated.

Federal Funds for Education

There were two federal appellate decisions concerning the supplanting of state and local school district funds with federal funds. In the first case, the United States Department of Education (DOE) brought suit against the state of Washington and the Spokane School District for allegedly supplanting local and state funds with federal funds which had been provided to the district under the Education of the Handicapped Act.[26] School officials denied the charge, arguing that during the 1980-81 school year, they had incurred an unusually large one-time expenditure ($250,000) by transferring all students who had previously been assigned to self-contained classrooms into the regular program. District officials contended that it was unreasonable for the DOE to insist that the district maintain in the years following 1980-81 the same level of effort of spending as they had that year, since the district's expenses had decreased because they no longer offered self-contained programs, nor were they funding additional transportation to support those programs. The DOE cited section 300.230(b)(1) of the Handicapped Act which outlines two exceptions to the maintenance of effort regulation: (1) when there is a decrease in enrollment of special education students, and (2) when unusually large amounts of funds are expended for such long-term purposes as the acquisition of equipment and the construction of school facilities.[27] In response, the district argued that their number of FTE students had decreased when they placed the students in regular classrooms; and the district had incurred an unusually large one-time expenditure.

The court affirmed the DOE's interpretation of the regulation that the Act required maintenance in funding level except in the two stated instances. The court also agreed with the DOE that in counting handicapped children, the actual number must be used rather than the number of FTE students. The court remanded the case to determine if the one-time large expenditure of the school district merited an exception to the maintenance of effort regulation.

In a similar case, the DOE brought suit against the city and state of New York for violating the Education Consolidation and Improvement Act

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26. Washington v. United States Dep't of Educ., 905 F.2d 274 (9th Cir. 1990).
27. *Id.* at 278.

by using federal funds to replace local and state funding for programs targeted towards educationally disadvantaged students.[28] The United States Secretary of Education ordered New York to repay $20,643,510 to the DOE, having determined that New York had used this amount of chapter 1 funds to offset a budget shortfall. New York education officials maintained that these funds were not used to supplant local and state spending, but to supplement spending, because without the federal dollars, a program for educationally disadvantaged students would have been terminated.

Citing the wording of chapter 1, that funds should be used to increase the level of support that would be made available from nonfederal sources, the court disagreed with New York officials' interpretation of the regulation, and ruled that federal funds could not be used to supplant local and state funding. The court also determined that an exception to the regulation (i.e., that federal funds were freed to be used for other special educational programs) did not apply in the present case. New York had used the $20 million saved in nonfederal funds to offset a budget shortfall, avoiding budget cuts in programs not aimed at educationally disadvantaged students.

School Fees

During this reporting period, a parent challenged school instructional fees, and developers in several states challenged impact fees. A single Utah parent with six children challenged a school district fee waiver policy which was more restrictive than the policy established by the Utah State Board of Education.[29] The Board's rules provided for fee waivers for children in custody, those in families receiving public assistance, and others who were unable to pay. The school district policy limited the waiver of fees to families receiving public assistance and established partial fee waivers.

In this case, the parent was denied a waiver of $200 in fees for three of her six children. When she appealed to the district, she was found eligible for a partial waiver, whereupon she appealed again and requested a formal hearing. After six months lapsed, she sought a declaratory judgment and injunctive relief, after which the formal hearing was conducted. When the waiver was denied, the plaintiff proceeded to trial, but was denied relief. The court found that the district did not distribute written rules or regulations about qualifying for a fee waiver (it had an unpublished policy providing for partial waivers), that the first appeal hearing was conducted without formal notice and written procedures, and that the district policy conflicted with the intent of state law. The case was reversed and remanded.

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28. New York v. United States Dep't of Educ., 903 F.2d 930 (2d Cir. 1990).
29. Lorenc v. Call, 789 P.2d 46 (Utah Ct. App. 1990).

Several school districts were involved in cases pertaining to residential growth impact fees which were imposed to relieve the burden on school facilities. When a New Hampshire city attempted to impose a growth impact fee on a developer for the funding of a new elementary school, the developer sought to invalidate the fee.[30] Because the city failed to follow procedures for a special assessment in its ordinances, the court granted the motion for summary judgment. In Pittsburgh and California, developers challenged the imposition of residential development fees for school facilities, and lost. The Pittsburgh developer failed to follow the procedural requirements for challenging the fee.[31] The California builder's case was affected negatively by the statute of limitations covering challenges to policy enacting new fee or service charges.[32]

Several other builders in California challenged school impact fees. One builder of a senior citizens' residence challenged the impact fee rate and lost. The Government Code was changed to reduce the rate applied to the construction of senior citizen housing after the builder paid the higher fee under protest. The court held that the school fees were properly collected before the building permit was issued.[33]

Another California developer was awarded attorney fees and granted a *writ of mandate* requiring the school district to vacate a resolution imposing school facilities fees on new commercial and industrial construction.[34] On appeal, the decision was affirmed and the order to award attorney fees was reversed. The district and developer argued that different statutes of limitation governed the time within which an attack of an ordinance or resolution must be filed. The court rejected both, and reviewed the case under a Code of Civil Procedures.

The court held that the school district was required to make certain findings as a precondition to imposing development fees. These findings included a reasonable relationship between the amount of fees to be paid, the needs of the community for elementary or high school facilities, and the need for schools caused by the development. While the district review focused primarily on the justification of fees on residential development, it merely acknowledged the absence of in-depth studies of the impact of commercial and industrial development and assumed a relationship between such development and the overall population. The court held this insufficient, stating that the effects on enrollment would vary widely depending on labor intensity, work force composition, labor recruitment area, and local multiplier effects. The court observed that these factors must be

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30. Mooney v. City of Laconia, 573 A.2d 447 (N.H. 1990).
31. North State Development Co. v. Pittsburgh Unified School Dist., 270 Cal. Rptr. 166 (Ct. App. 1990).
32. Trend Homes v. Central School Dist., 269 Cal. Rptr. 349 (Ct. App. 1990).
33. RRLH, Inc. v. Saddleback Valley Unified School Dist., 272 Cal. Rptr. 529 (Ct. App. 1990).
34. Balch Enterprises, Inc. v. New Haven Unified School Dist., 268 Cal. Rptr. 543 (Ct. App. 1990).

somehow related to square footage, and the commercial fee established must be considered in conjunction with the residential fee.

Action to invalidate an impact fee on all new construction to build schools was brought against St. Johns County in Florida by an association of builders. The court held that the ordinance violated the constitutional mandate for a uniform system of free public schools, characterizing it as nothing more than a user fee since it was imposed only on those households that had children in the public schools. They certified the issue to the Supreme Court as being one of great public importance.[35]

SCHOOL TAX ISSUES

Cases pertaining to school taxes were numerous and varied. They concerned student tuition, funding of desegregation remedies, property values, the disbursement of tax revenues, school budget provisions, tax exemptions, school bonds, and delinquent taxes.

Tuition

Tuition charges were challenged by driver and safety education instructors, parents of a Down's syndrome child, and a student seeking vocational education. A driver and traffic safety instructor in New York charged that the Commissioner of Education failed to mandate a specific driver and safety curriculum to be offered free of charge to all high school students.[36] Among other things, the plaintiff charged that statutes authorizing school districts to contract with commercial driving schools were unconstitutional and a violation of state law and collective bargaining rights. The motion was dismissed. On appeal, the court affirmed that the instructor did not have standing and that each school district was free to determine if it would offer driver and safety training, whether it would be offered in or outside the regular school schedule, and the charge, if any, to be imposed.

Parents who moved to Massachusetts from one New York town had a Down's Syndrome child who resided in a family home at board in another New York town. During the time the parents lived in state, the school district where they resided reimbursed the school district where the child resided at-board for tuition. When the parents moved to another state, the New York school district in which the child resided notified them that they would have to pay tuition for the child to continue in their schools. The

35. St. Johns County v. Northeast Fla. Builders Ass'n, Inc., 559 So. 2d 363 (Fla. Dist. Ct. App. 1990).

36. Messina v. Sobol, 553 N.Y.S.2d 529 (App. Div. 1990).

Commissioner of Education asserted that because the parents provided financial support and retained the right to revoke their delegation of parental authority, the child was not a resident of the town where he was at-board. The parents brought action and were granted summary judgment.[37] The child was entitled to a tuition free public education in the town where his at-board residence was situated. On appeal, the decision was affirmed. The court held that the Commissioner's decision was, in effect, requiring the nonresident parents to default on the support of their child and relinquish their parental rights. The court did note, however, that mere bodily presence, no matter how long a period, does not satisfy the residency requirement; this condition must be accompanied by a requisite intention to make the locality one's fixed and permanent home. In the present case, the family home at-board was in fact the child's fixed and permanent home. He had lived there since the age of two weeks, and he had never lived with his parents in their home.

Massachusetts statutes authorize regional vocational school districts, preclude member towns from offering the same kinds of vocational education programs, and provide that towns not maintaining vocational schools pay for resident students to attend other vocational schools. When a student was denied admission to the regional vocational school serving his community, he applied to another regional vocational school and was admitted. The Department of Education ordered the student's town to pay the tuition and transportation costs, and the town refused. The student then sought action against the town asserting that he was unlawfully excluded and that his civil rights were violated.[38] The case was transferred to the Supreme Judicial Court which ruled that by not paying the student's tuition and transportation, the town did not unlawfully exclude him from the advantages and privileges of the public schools. The decision was based on the fact that the town maintained a vocational school within the statutory meaning.

Taxation

The United States Supreme Court affirmed in part, reversed in part, and remanded a case which held that the Kansas City, Missouri School District and state of Missouri operated a segregated school district.[39] The district court ordered a detailed desegregation remedy, as well as the financing necessary to implement it. Costs were allocated between governmental entities. However, the court observed that several state statutes would preclude the school district from being able to pay its share. To remedy

37. Catlin by Catlin v. Sobol, 553 N.Y.S.2d 501 (App. Div. 1990).
38. Ciaramitaro v. Superintendent of Schools, 551 N.E.2d 24 (Mass. 1990).
39. Missouri v. Jenkins, 110 S. Ct. 1651 (1990).

this, the court enjoined the effect of a statutory provision for a property tax rate roll back contingent upon higher valuation, and later raised the property tax rate from $2.05 to $4.00 per $100 of assessed valuation so that the district could raise the necessary revenue.

On appeal, most of the decision was affirmed, but the lower court was ordered to divide the cost equally between governmental entities. On remand, the district court directed the state and district to share the cost according to the proportion of fault, which was 75% and 25%, respectively. The division was based on the reasoning that the person who starts the fire has more responsibility for damages than the one who fails to put it out. The court then ordered the district property tax to be increased for the fiscal year 1991-92. On appeal by the state, the decision was affirmed. However, the district court observed that principles of state/federal comity required the use of minimally obtrusive methods to remedy constitutional violations. In future instances, then, the lower court was directed not to set the tax rate but to authorize the district to submit the levy to state tax collection authorities and to enjoin the operation of state tax laws which hindered the school district from funding the remedy adequately. This, the court observed, would minimize disruption of state laws and processes while ensuring maximum consideration of state and local views.

Following a complicated set of procedural petitions and interpretations thereof, the United States Supreme Court reviewed the state's petition. The state argued that the district court remedies were excessive in scope and that the property tax increase violated article III, the tenth amendment, and principles of federal/state comity. The High Court concurred with the state's charge that the imposition of a tax increase by a federal court contravened the principles of comity by intruding upon and circumventing local authority. The Court emphasized that the remedial powers of an equity court must be adequate to the task but not unlimited, and that proper respect for the integrity and function of local government institutions is one of the most important considerations governing the exercise of equitable power. However, the Court then observed that while the district court believed it had no other alternative than to impose the tax, the court of appeals had outlined a proper alternative for future cases. The district court can properly authorize or require a local unit to levy property taxes at a rate adequate for the remedy and enjoin the operation of state laws that would prevent the local entity from exercising this power. Thus, the court of appeals should have reversed the district court on this matter.

The Supreme Court held that arguments pertaining to the scope of the remedy rather than the manner in which it was to be funded fell outside

their limited grant of *certiorari* in this case. The remedy rendered by the district court was accepted as proper. The Supreme Court affirmed that the district court properly enjoined state law so that the district could raise requisite tax revenues for satisfying its constitutional obligations.

The modifications ordered by the court of appeals were not invalidated by the tenth amendment, which reserved nondelegated powers to the states. The fourteenth amendment permits a federal court to disestablish local government institutions that interfere with its commands. Furthermore, a court order directing a local government to levy its own taxes is plainly a judicial act within the power of a federal court and is sustained by article III. Local governments with taxing authority may be ordered to levy taxes in excess of the limit set by state statute where the statute operates to hinder federal constitutional guarantees. The case was remanded for proceedings relative to the tax increase imposed by the district court.

Tax Assessment

New Jersey has regional school districts that are funded on the basis of a governmental unit's proportion of total equalized property value. Borough of Sea Bright alleged that this practice was a violation of the tax clause of the New Jersey Constitution and the equal protection clause of the United States Constitution.[40] The Borough argued that proper funding would be based on the percentage of students who were Borough residents. The Superior Court of New Jersey rejected plaintiff's challenges.

An Ohio local board of education sought a review of a property value set by the county tax auditor.[41] As a result the value of the property was increased more than 100%. When the board appealed to the Board of Tax Appeals (BTA), the valuation was increased in excess of another million dollars. On appeal, the court held that the BTA had properly used recent sale price as a measure of true value. Furthermore, the court observed that it would not substitute its judgment for BTA's unless its record indicated that the decision was unreasonable or unlawful.

The superintendent and school board of a Mississippi school district challenged the legitimacy of a leasehold interest in school trust land reserved by the Land Ordinance of 1785.[42] The appeal was taken after a Chancery Court confirmed the title to the holder of the interest. The Mississippi Supreme Court reversed the decision, holding that $7.50 for a ninety-nine year lease was grossly inadequate, and amounted to a donation of public lands prohibited by state constitution and trust law. The court invalidated the lease.

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40. Borough of Sea Bright v. Department of Educ., 576 A.2d 331 (N.J. Super. Ct. App. Div. 1990).
41. Board of Educ. v. Board of Revision, 558 N.E.2d 1170 (Ohio 1990).
42. Hill v. Thompson, 564 So. 2d 1 (Miss. 1989).

Tax Disbursement

A self-insured Colorado school district was granted summary judgment to recover insurance premium taxes for part of a six year period.[43] The Colorado Major Medical Insurance Fund permitted insurance carriers to discount the premiums they received and on which their tax obligation was assessed, but did not extend the same treatment to self-insured businesses. Regulations, passed at a later date, corrected this. When the school district began withholding the adjustment amounts, full remittance was demanded. The school district's recovery of taxes was limited only by its failure to seek judicial review in a timely fashion.[44]

In New York several school districts brought action against town tax officials to recover monetary damages for repeated failures by tax officials to disburse collected tax money in a timely fashion. On appeal, the complaint was dismissed. The court observed that an action for monies is quasi-contractual in nature and that there is no right of recovery under this theory if the money sought has already been paid to the party claiming it, and plaintiffs did not assert any damages which would otherwise be recoverable against the municipal defendants.

In Pennsylvania, the city of Erie had withheld 5% of city income tax collections as a collection fee for over forty years. The Harbor Creek Township School District lodged a protest in 1983 and the Millcreek District joined with Harbor Creek in a multi-count complaint in 1988.[45] The court enjoined Erie from retaining the collection fee as of 1989 and awarded Harbor Creek all collection fees withheld since 1985. Asserting the doctrine of equitable estoppel, waiver, and laches, the court did not return fees to Millcreek and Millcreek appealed.

On appeal, the court agreed that the doctrines of equitable estoppel, waiver, and laches could not be applied in the refusal to award past collection fees since they did not plead them. However, the court observed that the defense of laches was applicable even if not pled, and refused to interfere with the trial court's application of this equitable principle.

Use of School Tax Revenues

Whether an alternative lower budget for the use of school revenues could be placed on a school district's duly filed warning was decided by the Supreme Court of Vermont.[46] Ten percent of a district's voters petitioned to have the warning include a lower budget than that proposed by the school district. The school district declined to include the alternative

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43. Jefferson County School Dist. v. Division of Labor, 791 P.2d 1217 (Colo. Ct. App. 1990).
44. Board of Educ. v. Rettaliata, 559 N.Y.S.2d 758 (App. Div. 1990).
45. Harbor Creek School Dist. v. City of Erie, 579 A.2d 452 (Pa. Commw. Ct. 1990).
46. Pominville v. Addison Cent. Supervisory Union-Middlebury Union High School Dist. #3, 575 A.2d 196 (Vt. 1990).

proposal and taxpayers argued that the legislature did not restrict the proposal of a budget to school boards. The Supreme Court of Vermont affirmed a lower court decision to deny petitioners relief.

After a Missouri school district settled a liability case in which two teachers were awarded costs, attorney fees, and a compromise settlement, the district filed a claim for payment of litigation expenses against a liability insurance policy. The insurer refused payment contending the loss was not covered by the policy. The district sued for reimbursement of costs and settlement of the teachers' suit, damages for vexatious refusal to pay, and attorney fees.[47] After repeated appeals, the court held that the insurer was required to reimburse for sums paid in the settlement of the suit, but not for attorney fees.

When a dispute arose between a contractor retained to build a high school in Massachusetts and a subcontractor, an arbitrator awarded $75,000 to the contractor with most of it going to the subcontractors. The school district petitioned to vacate the award on the grounds that it exceeded the arbitrator's authority.[48] The court vacated the award, defendants appealed, and the decision was reversed. The court observed that, absent fraud, errors of law or fact are not sufficient grounds to set aside an award, and the arbitrator neither granted relief beyond the scope of the arbitration agreement, awarded relief beyond that to which the parties were bound, nor awarded relief prohibited by law.

In a related case in Georgia, the general contractor and subcontractor for construction of a high school filed a demand for arbitration seeking damages in excess of $1 million and attorney fees.[49] They alleged that delays and disruptions, interference with contractual relations, and other costs and expenses should be paid by the Board of Education. The Board sought a stay of arbitration proceedings and lost. The decision was affirmed on appeal.

The Harrisburg Community Unit School District No. 3 in Illinois published a notice of public sale which included a provision reserving the portable classroom to the sellers. They sold the school upon accepting a written offer from a purchaser. The purchaser refused to allow the district to remove the portable classroom. The district filed a complaint which was dismissed; that decision was affirmed on appeal.[50] The court held that the terms in the notice of public sale were not binding on the purchasers since they did not bid on the property at the public sale.

The Clearfield Area School District in Pennsylvania solicited bids for

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47. New Madrid County Reorganized School Dist. No. 1 v. Continental Casualty Co., 904 F.2d 1236 (8th Cir. 1990).
48. Plymouth-Carver Regional School Dist. v. J. Farmer & Co., Inc., 553 N.E.2d 1284 (Mass. 1990).
49. Raymer v. Foster & Cooper, Inc., 393 S.E.2d 49 (Ga. Ct. App. 1990).
50. Harrisburg Community Unit School Dist. No. 3 v. Steapleton, 553 N.E.2d 76 (Ill. App. Ct. 1990).

student transportation. After receiving them, the board voted to award the contract to the lowest bidder who met all specifications and bonding requirements. At the following meeting, the Board announced the successful bidder, whereupon an unsuccessful bidder filed for injunction and declaratory action. On appeal, it was determined that the Board had violated the Sunshine Act when it did not conduct a public vote to award the contract.[51]

A New York paint contractor sought to recover additional wages and supplements he was required to pay employees under minimum wage laws pertaining to public construction projects.[52] Plaintiff argued that the school district was negligent in failing to state the applicable wage law in soliciting bids for the contract. The negligence complaint was dismissed.

A Texas school district sought to recover cost of removing asbestos products from school buildings.[53] It argued that such a right of action was provided by the Comprehensive Environmental Response, Compensation, and Liability Act. In a complicated set of appeals and decisions, the Fifth Circuit United States Court of Appeals held that the district could not recover under this act, but remanded the case in part.

Tax Exemptions

Tax exemption cases during this period concerned an alleged violation of a state constitutional mandate and whether a conservation club, governmental county unit, and legal firm were eligible for property tax exemptions. The North Carolina Constitution provides that property forfeited for violation of state law be used for school purposes. After a local police department received and retained money that was forfeited under federal law, the county Board of Education filed suit to receive the funds and lost. On appeal, the district court decision was affirmed.[54]

After the local police recovered weapons, cocaine, and cash from an in-state-residence, they charged the possessor with violating two provisions of state controlled substance statutes. The Police Department requested that the Drug Enforcement Administration seize the cash administratively. A month later, the Department petitioned for equitable distribution of the cash. The Drug Enforcement Administration initiated administrative forfeiture proceedings, and two months later transferred a portion of the funds to the Police Department.

Between the time that the Police Department filed for an equitable

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50. Harrisburg Community Unit School Dist. No. 3 v. Steapleton, 553 N.E.2d 76 (Ill. App. Ct. 1990).
51. Jones v. Clearfield Area School Dist., 578 A.2d 612 (Pa. Commw. Ct. 1990).
52. Brian Hoxie's Painting Co. v. Cato-Meridian Cent. School Dist., 556 N.E.2d 1087 (N.Y. 1990).
53. Dayton Indep. School Dist. v. United States Mineral Prods. Co., 906 F.2d 1059 (5th Cir. 1990).
54. United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

distribution of the cash and received same, the case was voluntarily dismissed by the state. The district court then ordered the Police Department to return the seized cash to the person arrested. However, the Department never received the order. Later, state charges were reinstated, resulting in an indictment and conviction. The state superior court then ordered the return of cash to the defendant on the grounds that the state prosecutor failed to show that the cash was subject to forfeiture under North Carolina law. The order was neither served nor carried out, and the state prosecutor moved to rescind the order.

The Police Department was ordered to forward the cash to the court to be held pending further proceedings. The Department complied under protest and sought declaratory judgment. The court held that the North Carolina Constitution did not give state courts exclusive jurisdiction over the cash seized. The court of appeals affirmed that only if the state forfeiture proceeding was initiated prior to the federal forfeiture proceeding, and if both procedures were *in rem*, would the state courts have exclusive jurisdiction. The state constitutional provision applies only to forfeitures resulting from breach of state penal law.

Whether a local conservation club was entitled to a property tax exemption was at issue in Michigan.[55] Following fifteen years of exempt status, the property of the Ravenna Conservation Club was placed on the tax rolls. The club appealed its status, asserting that it was an educational institution and a charitable organization. The State Tax Tribunal denied the request, asserting that the club was neither educational nor charitable, whereupon the club appealed.

The Michigan Court of Appeals reversed the State Tax Tribunal, holding that the club was a charitable organization. The court observed that the purposes and activities of this nonprofit organization were to conserve and promote natural resources and wildlife in the state, and that they were intended to benefit the general public without restriction. In addition, the court noted that the club's property was open to the public; its services were available without charge; and club activities lessened an expressly recognized burden of the government.

A religious corporation located in New York failed to pay real estate taxes on its property from 1979 to 1983, at which time the County Treasurer deeded the land to Rockland County. The religious corporation subsequently paid the back taxes, but the County failed to deed the land back to the corporation.

The County began paying taxes levied on the land by the school district in 1986 and subsequently sought reimbursement from the religious corporation. The religious corporation sued for declaratory judgment based on an entitled real property tax exemption. The motion for summary

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55. Moorland Township v. Ravenna Conservation Club, 455 N.W.2d 331 (Mich. Ct. App. 1990).

judgment was granted and a refund of school district taxes paid by the county from 1986 to 1988 was ordered. The school district appealed, arguing that when the county acquired the tax deed, it became the legal owner and title holder of the property, thus making the county obligated to pay.[56] The County argued that it did not hold a valid tax deed since the land had been granted tax exempt status by a supreme court declaration. The court held that as legal title holder, the County was responsible for the school taxes during the years at issue.

A Pennsylvania law firm sought exemption from The Williamsport Area School District Mercantile and Business Privilege Tax, imposed on the gross income of businesses and professions performing services in the jurisdiction.[57] The law firm argued that the practice of law is subject to pervasive regulation by the Pennsylvania Supreme Court, and like liquor and banking industries, it should be exempt from such taxes.

The complaint was dismissed and the decision affirmed on appeal. The court held that the regulatory scheme affecting the legal profession merely monitors the admission, monitoring, and discipline of attorneys' professional and ethical behavior. Such regulation is unlike the regulation of business activity to which bank and liquor industries are subjected.

Bond Issuance

Taxpayers challenged a school bond referendum for nonschool use of facilities, combining multiple capital projects into one referendum, exceeding statutory interest rate ceilings, and failing to give proper notice for capital project funding hearings. In other cases, they questioned school district rights to use fire insurance proceeds to construct a school and to enter into complex lease agreements without voter approval. One school district successfully enjoined a county board of elections from conducting a nonbinding referendum concerning the desirability of the board's decision to construct a school.

Tucson Electric Power Company brought action to enjoin construction of a domed athletic facility at a Round Valley Unified School District high school.[58] On appeal, it argued that the facility was not a school building because nonschool uses were planned for it. The electric company contended also that the bond election was unfair due to information given to the public by the school superintendent and others, that the

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56. Congregation Zemach David of New Square v. County of Rockland, 558 N.Y.S.2d 702 (App. Div. 1990).
57. Reiders, Travis, Mussina, Humphrey & Harris v. City of Williamsport, 578 A.2d 618 (Pa. Commw. Ct. 1990).
58. Tucson Elec. Power Co. v. Round Valley Unified School Dist. No. 10, 789 P.2d 399 (Ariz. Ct. App. 1990).

election ballot did not comply with statutes, and that the trial court should have allowed them to amend their complaint on the day of trial.

The court of appeals affirmed the trial court's decision to deny Tucson Electric injunctive relief. The court asserted that the primary use of the domed facility was as a high school athletic facility, and Arizona statutes expressly provide for nonschool use of school buildings. The court observed that it does not determine the wisdom of public expenditures. Furthermore, it rejected plaintiff's contention that it should control the political speech of the superintendent through the imposition of some duty of fairness, and observed that the appropriate remedy for unfair speech is more speech.

In a complicated set of proceedings and appeals, Georgia taxpayers brought action against the Bibb County Board of Education for submitting a single $29 million bond issue to voters rather than four separate bond issues for four categories of school improvements.[59] Plaintiffs argued that combining the projects in one referendum was a violation of state statutes requiring the combined bond issue be submitted to the Attorney General because the change did fall within the meaning of prohibitions contained in the Voting Rights Act and was a violation of their constitutional rights. Plaintiffs contended that the structure of the referendum placed racial restrictions on voting rights since support for parts of the referendum were split along racial lines.

Lower courts found that the structure of the referendum did not fall within the meaning of Voting Rights Act prohibitions. On appeal, the United States Court of Appeals, Eleventh Circuit, held that the form or structure of a referendum was a standard practice or procedure within the meaning of the Voting Rights Act which prohibits racial restrictions on voting rights. The court asserted that the combined referendum had the potential for abridging the right to vote on account of race. The court affirmed the right of minority communities to have a "fully effective vote." The case was remanded to the district court with instructions to determine whether section 2 of the Voting Rights Act had been violated.

Illinois taxpayers challenged a school district's right to issue school bonds for safety improvements at an interest rate exceeding that contained in the School Code.[60] The School Code had an interest rate ceiling of 7%, but the Bond Authorization Act, governing bond indebtedness for any public corporation, had a ceiling of 9% per annum. The circuit court held that the school district was authorized by the Bond Authorization Act to set a rate higher than 7%. The appellate court reversed and the Supreme Court of Illinois reversed and remanded the case.

Montana taxpayers challenged a school district's authority to purchase land and construct a middle school without direct approval of electors.[61]

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59. Lucas v. Townsend, 908 F.2d 851 (11th Cir. 1990).
60. Bates v. Board of Educ., 555 N.E.2d 1 (Ill. 1990).
61. Awareness Group v. Board of Trustees, 795 P.2d 447 (Mont. 1990).

The court dismissed petitions and held that construction of the school with fire insurance proceeds did not require the approval of electors. The decision was affirmed on appeal.

Whether school districts could enter into complex lease agreements without voter approval was at issue in Wisconsin and Florida. Wisconsin taxpayers asserted that a unified school district lacked the power to enter into a lease-purchase agreement for a new high school because it created an indebtedness requiring taxpayer approval. The district contracted to lease the high school because the voters had refused to fund construction of a new school for more than twenty years. The court granted summary judgment to the school district, which was affirmed on appeal.[62]

In Florida, school boards sought judicial validation of a ground lease of school land to not-for-profit entities, a board's leaseback of facilities to be constructed, and trust agreements regarding lease rights.[63] The court validated the obligations, whereupon the state appealed. In affirming this decision, the appellate court stated that because the obligations were not supported by *ad valorem* taxation, referendum approval was not required.

An Indiana taxpayer challenged the adequacy of notice given by a school board proposing to establish a capital projects fund for school construction.[64] The taxpayer was not a resident in the school district where her property was situated. Notice of the proposal hearing was not mailed to nonresident taxpayers, and it was published only once. The school board and state board contended that statutes required only one notice, and there was no duty to notify taxpayers by mail. The Tax Court held that the Capital Projects Fund was a cumulative fund because it was spread over three years and the sources from which the fund was derived were added together to form one fund. In the case of cumulative funds, two notices are required. The case was remanded to the State Board of Tax Commissioners for further action.

A county election board in Pennsylvania sought to conduct a nonbinding referendum question concerning the desirability of Hempfield School District's decision to build a new high school.[65] The school district sought to enjoin the county board of elections from doing so. The district argued that statutes provide school directors with the authority to determine the means for obtaining public review of construction, leasing, or renovating school buildings. The court dismissed the request and, on appeal, the decision was reversed. The commonwealth court held that the election board had no legal authority to place the nonbinding referendum on the primary ballot and that this unlawful action constituted immediate and irreparable harm to the school district.

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62. Dieck v. Unified School Dist., 458 N.W.2d 565 (Wis. Ct. App. 1990).
63. State v. School Bd. of Sarasota County, 561 So. 2d 549 (Fla. 1990).
64. Ackelmire v. North Vermillion Community School Corp., 558 N.E.2d 916 (Ind. Tax Ct. 1990).
65. Hempfield School Dist. v. Election Bd. of Lancaster County, 574 A.2d 1190 (Pa. Commw. Ct. 1990).

Delinquent Taxes

Two delinquent tax cases were litigated in Texas during this reporting period. A Texas school district brought action against a church for delinquent taxes on property which it owned and used for a private school.[66] The court ruled that the procedure for claiming a tax exempt status violated church rights to free exercise of religion. When the school district appealed, the court ruled that the church ceded its constitutional claim by filing an application for property tax exemption on which it changed the words "application" to "information" and "applicant" to "informant." The church was ordered to pay delinquent taxes on that part of the property which was used for school purposes.

Irving Independent School District in Texas sought to recover unpaid *ad valorem* taxes and penalty obligations arising from same.[67] The Federal Deposit Insurance Corporation, successor for the Federal Savings and Loan Insurance Corporation, brought a motion for summary judgment. The motion was granted, and the court held that the FDIC was not liable for the statutory penalties and interest authorized by the Texas Tax Code.

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66. Birdville Indep. School Dist. v. First Baptist Church, 788 S.W.2d 26 (Tex. Ct. App. 1990).
67. Irving Indep. School Dist. v. Packard Properties, Ltd., 741 F. Supp. 120 (N.D. Tex. 1990).